

UNITED STATES DISTRICT COURT
DISTRICT OF PUERTO RICO

HIRAM ASECNCIO-ALEMÁN,

Claimant,

v.

COMMISSIONER OF SOCIAL SECURITY,

Respondent.

Civil No. 08-1377 (JAF)

OPINION AND ORDER

Claimant, Hiram Asencio-Alemán, brings this petition under 42 U.S.C. § 405(g) to review the decision by Respondent, the Commissioner of Social Security ("Commissioner"), against reopening Claimant's application for benefits. Docket No. 2. The Commissioner moves to dismiss, Docket No. 10; the motion is unopposed.

We derive the following facts from the parties' submissions. Docket Nos. 2, 10, 11. On January 31, 2001, Claimant applied for Disability Insurance Benefits ("DIB"), claiming that he has been disabled since March 15, 1997. The Commissioner denied the application and denied Claimant's motion for reconsideration. On April 25, 2002, an Administrative Law Judge ("ALJ") found that Claimant was not disabled within the meaning of the Social Security Act. On August 13, 2002, the Appeals Council declined review of the ALJ's decision, which became a final agency decision by the Commissioner. Claimant did not appeal this decision.

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1 On February 5, 2004, Claimant filed a second application for
2 DIB, alleging that he has suffered disability since March 17, 1997.
3 The Commissioner again denied this request and declined to reconsider
4 his decision. On July 27, 2006, an ALJ found that this second
5 application involved the same issues as the previous one, and that
6 Claimant proffered no new evidence of his disability. Docket No. 11-
7 5. The ALJ treated Claimant's second application as an effort to
8 reopen his prior claim, and concluded that res judicata applied to
9 bar the second application and that no grounds existed to warrant
10 reopening the prior case. Id. On January 30, 2008, the Appeals
11 Council declined review of this second decision, which became the
12 Commissioner's final decision.

13 On March 31, 2008, Claimant petitioned this court to review the
14 Commissioner's second decision, alleging new evidence. Docket No. 2.
15 On August 20, 2008, the Commissioner moved to dismiss on the basis of
16 res judicata. Docket No. 10. Claimant has not opposed this motion.

17 "Neither the Social Security Act nor the Administrative
18 Procedure Act authorizes judicial review of a final decision of [the
19 Commissioner] not to reopen a claim of benefits." Colón v. Sec'y of
20 Health & Human Servs., 877 F.2d 148, 152 (1st Cir. 1989) (citing
21 Califano v. Sanders, 430 U.S. 99 (1977)). The sole exception to this
22 rule is where a claimant alleges a constitutional deprivation. Id.

23 Claimant seeks our review of "the entire administrative record
24 and the new medical evidence submitted," Docket No. 2, which would

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1 require us to second-guess the ALJ's decision against reopening
2 Claimant's case, see Docket No. 11-5. Claimant alleges no
3 constitutional violation. See Docket No. 2. We, therefore, lack
4 subject-matter jurisdiction to entertain this petition. See Colón,
5 877 F.2d at 152.

6 Accordingly, we hereby **GRANT** the Commissioner's motion to
7 dismiss, Docket No. 10, and **DISMISS** Claimant's petition, Docket
8 No. 2, **WITH PREJUDICE**. We hereby **DENY AS MOOT** Claimant's motion to
9 strike and for default, Docket No. 21.

10 **IT IS SO ORDERED.**

11 San Juan, Puerto Rico, this 2nd day of June, 2009.

12 s/José Antonio Fusté
13 JOSE ANTONIO FUSTE
14 Chief U.S. District Judge